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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them	)	PR Docket No. 92-235
	)	
and	)	
	)	
Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services	)	

To: The Commission

CONSOLIDATED REPLY TO OPPOSITIONS AND COMMENTS

SMALL BUSINESS
IN TELECOMMUNICATIONS

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Dated: July 1, 1997

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SUMMARY OF THE FILING

Small Business in Telecommunications, Inc. (SBT) generally agrees with Personal Communications Industry Association on the matter of SBT's suggestion that the Commission adopt a rule authorizing trunked operation on a developmental basis. SBT outlines its areas of limited disagreement with PCIA on developmental operation and suggests means of resolution.

Although it could revisit the matter later, the Commission should now adopt an interference protection standard of 18 decibels for the Business/Industrial pool.

The Commission should impose frequency cap on the fees of the coordinators of the protected frequencies. The Commission should prevent unfairness to all applicants and avoid creating a basis for reconstruction of block frequency allocations by limiting the charges of the coordinators to the maximum charged by the coordinators which operate on a competitive basis.

The Commission has given sufficient notice to the public and should act at once to establish standards for the certification of additional frequency coordinators.

To avoid abuses, the Commission should require each frequency coordinator to recommend the most appropriate frequency of those which are available to that coordinator. If an applicant desires a protected frequency, he should request one. If, however, the applicant would be satisfied with a non-protected frequency, the most appropriate frequency of those available to the coordinator selected by the applicant should be recommended.

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To: The Commission

CONSOLIDATED REPLY TO OPPOSITIONS AND COMMENTS

Small Business in Telecommunications (SBT), by its attorneys, hereby files its Consolidated Reply to the Opposition and Comments of Personal Communications Industry Association (PCIA); the Comments of Forest Industries Telecommunications; the Comments of Affiliated American Railroads (AAR); the Comments of UTC; and the Comments of Association of Public-Safety Communications Officials-International (APCO) (collectively, the "Commenting Parties"). In support of its position, SBT shows the following.

The Age Of Non-Consent

As explained in SBT's Petition for Reconsideration, an alternative is needed to the requirement to obtain consent of numerous licensees to the operation of a centralized trunking system. A progressive licensee's ability to operate a trunked system should not depend on the vagaries of personal relationships between the licensee and all co-channel and adjacent channel

licensees, not all of whom can be relied upon to be good guys, or even sane and reasonable people. The barrier imposed by an applicant's inability to obtain the consents of all other licensees would, in many instances, unreasonably stifle the development of efficient trunked operation and unduly obstruct the development of the small businesses which desire to use the most efficient radio technology to improve their delivery of goods and services to the marketplace. It may be possible, in some remote areas, for there either to be no affected licensee, or for all of the required consents to be obtained. In the urban areas, however, where the efficiency of trunked operation is needed most, but where civility is sometimes a scarce commodity and the age of non-consent reigns, experience shows that consents will be unavailable and, therefore, an alternative path is needed if the Commission, licensees, and the public, nationwide, are to enjoy the benefits of trunked operation.

Developmental Authority For Trunked Operation

PCIA and SBT are in general agreement on SBT's request that the Commission make available an opportunity for persons desiring to operate a trunked system below 470 MHz to commence operation under a developmental authorization. PCIA and SBT initially expressed minor differences of detail which SBT will discuss here.

SBT suggested a two-year developmental period, while PCIA suggested that the period be one year. SBT would have no objection to the shorter period. In contrast to the situation involving possible 43 MHz band paging station interference to broadcast television reception, users of business and industrial two-way radio communications are likely to recognize

interference if it occurs and are likely to be able to bring the matter to the interfering party's attention promptly. Accordingly, there is good reason for a shorter developmental period for channels shared among two-way users than for frequencies on which interference may result to television receivers. SBT's reason for suggesting a two-year period was that other licensees should have at least one year within which to experience the developmental trunked system. A two-year period would, at worst, provide the licensee with up to one year to construct and would provide the other licensees with at least one full year of experience. If, however, the Commission would be comfortable with the one-year period suggested by PCIA, then SBT would have no objection.

While PCIA would limit developmental operation to existing licensees, there would not appear to be any valid reason for requiring a person to obtain a license first and then return with yet another application to request a trunked developmental authorization. The Commission should allow any eligible person, whether an existing licensee on a frequency or not, to request a trunked developmental license. The frequency coordinators can handle an application for a new station as well as they can handle an application for modification and carry out the Commission's objective of avoiding harmful interference.

SBT agrees fully with PCIA that a person desiring a developmental authorization should be required to submit a coordinated application to the Commission. SBT also agrees fully with PCIA's suggestion that an applicant for a developmental authorization serve a copy of its

application on all existing co-channel licensees, and SBT goes beyond PCIA to suggest that service also be made on all primary adjacent channel licensees.

SBT concurs with PCIA's suggestion that, once a developmental license has been granted, anyone else who holds a license on the channels in the same general area may be able to obtain a trunked developmental license in the same general area. However, with respect to the first developmental licensee, the Commission should require a later applicant to comply with the same interference protection standards which it finally adopts in this proceeding. That is, the second and subsequent applicants should be required to provide interference protection to all preceeding trunked developmental licensees as they would be required to provide if they were applying for a primary, exclusive trunked system, rather than a developmental authorization. Otherwise, the early developmental systems may be subject to undue interference and there will be little or no incentive for "early adopters" to bring to the spectrum the efficiency benefits of trunked operation.

SBT suggested that a developmental license should ripen into a permanent, exclusive authorization if, at the end of the developmental period, all interference complaints (if any) had been satisfactorily resolved. SBT disagrees with PCIA's suggestion that, at the end of the developmental period, the developmental licensee should be required to return to the frequency coordinator and to serve copies of an application on other licensees. Other licensees will have been informed of the developmental operation by the applicant's initial service and will have had a sufficient time to make any complaint which may have been necessary. Having already

recommended the most appropriate frequencies, there would not appear to be any necessary role for the frequency coordinators at the end of the developmental period.

The danger of requiring a developmental operator to file an application at the end of the period and serve copies on other licensees is that such actions may prompt other licensees to hold the final application hostage to whatever fanciful demands that they may conceive. Having had notice and having had the entire developmental period within which to raise any legitimate difficulties with the trunked operation, other licensees should not be handed an invitation to submit ransom notes at the end of the period. Rather, the developmental licensee should be required only to submit a report describing any interference problem which may have arisen, the steps taken to resolve the problem, and the results of the actions taken. If the licensee certifies that all problems have been resolved, the license should ripen automatically into a primary, exclusive authorization without further coordinator or Commission action.

"Centralized trunking" obviously means that there is some means by which the trunked operation is centrally controlled. Centralized trunking systems customarily have been designed with the expectation that the system would have exclusive use of the channels and they have not monitored before transmitting. "Decentralized trunking" systems, by definition, do not operate with a central control system. Rather, some or all of the "intelligence" is contained within the mobile units. Decentralized systems customarily have been designed with the expectation that the mobile unit would have to monitor the frequency before transmitting, because the channel may not be exclusive to the system. While SBT can conceive of trunking systems which could

be used on shared channels without causing harmful interference, SBT agrees with UTC that, in general, a decentralized trunking system must include a means of preventing the mobile unit from transmitting when the channel is already in use. Because it would be possible for a decentralized system to operate successfully without the mobile unit's directly monitoring a frequency before transmitting on it, SBT suggests that the Commission not limit system design innovation by requiring mobile unit monitoring, but rather, the Commission should more generally require that a system which is not specifically authorized for trunked operation not cause harmful interference to any co-channel licensee. Such requirement, which already exists within the Commission's Rules, see, 47 C.F.R. 90.173(b) and 47 C.F.R. §403(e), should be sufficient to protect all users while providing the maximum opportunity for design innovation.

Several of the Commenting Parties (and some petitioners) suggested that the Commission should adopt a standard for service and interference contours for purposes of determining the persons whose concurrence was required for trunked operation. While one may reasonably suggest that the signal levels at the contours which the Commission chooses don't matter much because the concept of concurrence is unworkable in all but the most rural areas, the Commission may desire to rely on the substantial efforts which it expended at 800 and 900 MHz to determine, based on industry experience, that a protection ratio of 18 dB is sufficient to provide reliable trunked operation, adequate protection to co-channel licensees, and adequate frequency reuse. While the 25 dB protection ratio suggested by APCO may be necessary for Public Safety operations, a ratio of 18 dB should be sufficient to meet the Commission's objectives in the Business\Industrial frequency pool.

While SBT respects AAR's suggestion that an industry committee conduct studies to determine appropriate frequency levels,[1] the industry is ready to progress trunked operation now. Waiting for a study to be completed, the Commission to engage in further rule making, and any appeals which might result, would surely delay centralized trunking for at least 18 months. The objective of spectrum efficiency would be better served by the Commission's adopting a 18 dB protection ratio now and revisiting the matter when additional information becomes available.

Coordination Fee Issues

The Commission established the general Business/Industrial pool and, within that pool, protected certain frequencies by requiring that they be coordinated by only one coordinator.[2] SBT shall refer to those frequencies as the "protected frequencies" and the coordinators which are certified to coordinate those frequencies as the "protected coordinators".

The question of fees for coordination of the protected frequencies is not, as AAR would have it, primarily one of discrimination between classes of applicants.[3] It is, rather, one of

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[1] An activity which the Commission was unable to undertake in the bands above 800 MHz.

[2] Specifically, the Commission protected the frequencies which were allocated only to the Railroad, the Power, and the Petroleum Radio Services.

[3] Although the issue of coordination fees is not primarily one of discrimination, AAR's statement that its "primary task is to ensure that the critical safety uses of these frequencies by the railroads are protected" gives rise to a question whether AAR is "on board" with the Commission's mandate that the coordinator's duty is to recommend "the most appropriate frequency", without regard to the class of applicant or the applicant's proposed use of a frequency.

fairness to all applicants for protected frequencies. To assure that the remaining monopoly coordinators do not abuse their non-competitive status, the Commission should, as it does in dominant carrier regulation, impose a price cap on the fees of the protected frequency coordinators which does not exceed the highest fees charged by the competitive, non-protected coordinators. Such a cap will protect all applicants against the potential for abuse when they are not able to obtain competitive service offerings.

It is not enough for a coordinator of protected frequencies, such as AAR or UTC, to establish the same level of fees for all applicants. SBT's concern is that a coordinator of protected frequencies may be positioned to maintain an artificially high fee schedule for the purpose of limiting the class of persons who are able to request the protected frequencies. While a railroad, a petroleum operator, or a power utility can well afford a high fee, a small business may not be able to apply for a protected frequency if the coordinators of the protected frequencies are allowed to charge a fee which is above the highest competitive level charged for the unprotected frequencies. Because of various applicants' varying abilities to pay, an artificially high fee can be used to maintain the rigid, now discarded, block allocation scheme indefinitely and can obstruct optimum frequency reuse. A coordination fee for the protected frequencies that is higher than the fees charged by the competitive coordinators can also be harmful to the economy because artificially high fees must be passed on to consumers and rate payers in higher prices for licensee's services. To protect the interests of small business, to advance the Commission's objective of increasing reuse of the spectrum, and to protect the

interests of consumers of the services provided by protected frequency eligibles, the Commission should cap the charges of the protected frequency coordinators at the highest level of charges found among the competitive, non-protected coordinators.

Competitive Coordination

In the above captioned matter, the Commission undertook a thoroughgoing revision of its frequency allocation scheme and adopted numerous new and amended rules and policies concerning frequency coordination. In view of the scope of the revisions which the Commission made to the relationship between coordinators and other entities, including other coordinators and applicants, the public has had sufficient notice to allow the Commission to adjust the relationships as requested by SBT.

PCIA does not support the Commission's establishment of the frequency coordinator as the agent of the applicant. The only reasonable alternative would be for the Commission to hold that the coordinator is the agent of the Commission, and in that case, the Commission, rather than the applicant, should pay the coordinator's fees. SBT suggests that the frequency coordination process can proceed most reasonably if the Commission determines that the frequency coordinator serves as the agent of the applicant, and not as the agent of the Commission.

SBT respectfully disagrees with PCIA that a coordinator was required by Congress to be representative of any class of persons. While there was discussion of representativeness in the

legislative history of Section 332 of the Communications Act of 1934, 47 U.S.C. §332, Section 332 contains no requirement of representativeness. While the Commission was permitted to consider representativeness under the old block allocation scheme, Congress did not require that a coordinator be representative of any person or class of persons. Under the new regime, the concept of representativeness makes no sense. One must ask the rhetorical question, can an organization claim to represent the entire universe of persons eligible for Business/Industrial licenses, the interests of Personal Communications Service licensees, the interests of SMR operators, tower operators, and anyone else inadvertently omitted from this list without the concept of representativeness inflating into meaninglessness? It has been well said that he who represents everyone represents no one. With the end of block frequency allocations, the need for representativeness and one's ability to claim representativeness of a class of users without running afoul of the requirement of neutrality ended, as well. With the end of block allocations and the end of any meaning to "representativeness", the Commission should redefine the relationship between coordinator and applicant and should promptly provide standards for the entry of additional coordinator competitors.

UTC would place the burden on SBT to show that the coordination and licensing process would be improved if additional coordinators are certified or that applicants' and licensees' interests would be enhanced by expanding the number of coordinators. Once a competitive environment has been established, however, the burden is on the person who would limit competition to demonstrate that better results would be obtained from continuing restricted entry to the field. UTC is certainly correct that the process of frequency coordination is not a trivial

one. UTC, however, showed no reason why the opportunity should not be opened to any qualified person or entity with the objective of providing the maximum possible amount of competition at a market clearing price.

UTC raised an interesting problem in its support of Industrial Telecommunications Association's (ITA) request for clarification as to whether a competitive coordinator which concludes that a protected frequency would be the most appropriate for an applicant can forward the application to the coordinator of the protected frequency. Such an option presents a number of issues. First, to prevent abuses, the Commission has historically not permitted a coordinator to tell an applicant that no shared frequency was appropriate for its use; rather, the coordinator has been required to recommend the most appropriate of the frequencies available to it.[4] The change supported by SBT would allow the competitive coordinators to make the protected frequencies subject to "adverse selection", that is, to make them a dumping ground for problem laden applications against the wishes of protected frequency users and against the best intentions of the protected frequency coordinator.

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[4] For example, the Special Industrial coordinator has not been permitted to hoard channels by saying to an applicant, "Yes, you're eligible here, but go to PCIA, instead, because we don't want to give you a frequency,". In the interservice sharing context, with the consent (indeed, sometimes the begging) of the applicant, the coordinator has been permitted to certify that no frequency in the applicant's "home" service would be suitable, but if the applicant were eligible and demanded a frequency in its home service, the coordinator has been required to recommend the most appropriate frequency among those available to it.

Second, the question arises of whether the applicant should be required to pay the protected frequency coordinator's fee or accept a protected frequency if the applicant would be satisfied with an unprotected frequency. It does not seem fair to require an applicant to pay a protected coordinator's fee or to take a protected frequency if an unprotected frequency would, in the applicant's opinion, meet the applicant's needs. Correspondingly, it also does not seem fair to require a protected frequency coordinator to accept other than its regular fee upon a possibly unwanted referral from another coordinator.

Third, allowing an unprotected coordinator to channel eligibles for protected frequencies to those frequencies would seem to tend toward reestablishment of the discredited block allocation scheme. Were the unprotected coordinators to refuse service to eligibles for protected frequencies, such an action would appear to place the protected frequencies in the position of being seeds for reestablishment of numerous, additional, protected block allocations.

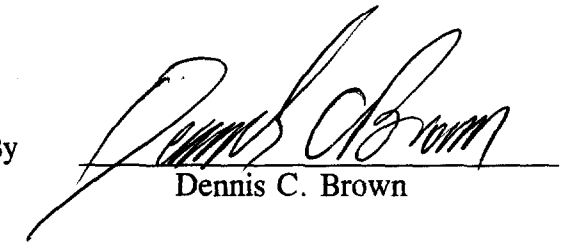
On the whole, SBT recommends that the Commission require each coordinator to recommend the most appropriate frequency among those available to it. If the applicant is eligible for a protected frequency and actually desires such a frequency, it can request recommendation of a protected frequency by the protected frequency coordinator. Otherwise, an applicant should have the liberty of requesting an unprotected frequency. This is not to suggest that the coordinator could not informally advise the applicant that it might be better pleased with a protected frequency, rather, it is to suggest that the coordinator should be

required to recommend the most appropriate of the frequencies available to it, if that is what the applicant desires.

Conclusion

For all the foregoing reasons, SBT respectfully requests that the Commission reconsider its Second Report and Order in the above captioned matter as requested herein.

Respectfully submitted,
SMALL BUSINESS
IN TELECOMMUNICATIONS

By 
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CERTIFICATE OF SERVICE

I hereby certify that on this first day of July, 1997, I served a copy of the foregoing Consolidated Reply to Oppositions and Comments on each of the following persons by placing a copy in the United States Mail, first-class postage prepaid:

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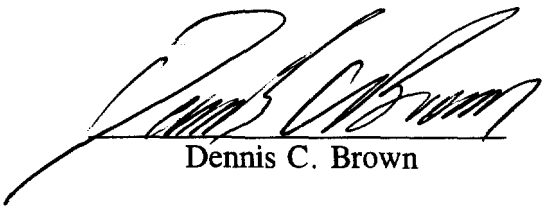

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